

MEMORANDUM

TO: Council Members  
FROM: Jim H. Branson  
Executive Director  
DATE: August 8, 1985  
SUBJECT: MFCMA Reauthorization

ACTION REQUIRED

Information only.

A. Senate Hearing

The latest action regarding reauthorization of the Magnuson Fishery Conservation and Management Act was a hearing on July 23 held by the Senate Committee on Commerce, Science and Transportation and chaired by Senators Stevens and Gorton. The hearing focused on reauthorization bills introduced by Senators Lautenberg (S. 747), Stevens (S. 1245), and Gorton (S. 1386). Summaries of these bills and the positions adopted by the Council's reauthorization committee are included as Attachment A.

Chairman Jim Campbell was invited to testify at the hearing on behalf of the North Pacific Council and Bob Martin, Chairman of the Mid-Atlantic Council, spoke for the other Regional Councils. Chairman Campbell's written and spoken comments are included as Attachment B and Chairman Martin's written statement is Attachment C. No formal action was taken by the Committee on July 23 and mark-up is not expected before mid-September.

The only action concerning reauthorization in the House since the May Council meeting was the reporting of H.R. 1533 out of Committee on June 10. You were briefed on this legislation in May. A copy of the bill integrating subcommittee and committee amendments is included as Attachment D. The full House is not expected to consider this bill until after the Senate mark-up of S. 747, S. 1245 and S. 1386.

## B. Current Chairmen's Recommendations

At their recent meeting, the Council Chairmen addressed selected reauthorization issues. The Chairmen reaffirmed previously stated positions and, in some instances, expanded on earlier comments. The issues discussed by the Chairmen and their recommendations appear below:

1. Issue: Phase Out of Foreign Fishing

Recommendation: Instead of amending the Act to establish a uniform phase-out schedule with a date-certain end to foreign fishing, language should be added to give the Councils authority to establish their own phase-out schedule on a species-by-species basis.

2. Issue: Bilateral Fishing Agreements

Recommendation: Bilateral agreements are not needed and, as proposed in S. 1386, may completely circumvent the Council process. If bilateral agreements are to be authorized, concurrence by the appropriate Council should be required before the agreement becomes effective.

3. Issue: Basket Clause

Recommendation: Support the section of S. 1386 that amends Section 201(e)(1)(E)(viii) in the list of factors the Secretary of State may consider before releasing allocation to read, "such other fishery matters as the Secretary of State in cooperation with the Secretary deems appropriate" (emphasis added), rather than, "such other matters . . ."

4. Issue: Council Composition and Qualifications of Members

Recommendation: The Chairmen are opposed to proposals in House legislation, H.R. 1533, that would require (1) Council members to be knowledgeable and experience in commercial and recreational fishing matters rather than knowledgeable or experienced, and (2) a fair apportionment of Council seats on a rotating or other basis to the various sectors of the active participants in the fisheries under a Council's jurisdiction.

5. Issue: Limited Entry Referendum

Recommendation: The Chairmen are opposed to the section of H.R. 1533 that would require approval of any limited entry system a Council may propose by 2/3 of the fishermen participating in the fishery. This would limit a Council's management options.

6. Issue: Secretarial Preemption of State Fishery Management

Recommendation: The Chairmen considered the provisions of H.R. 1533 that would allow Secretarial preemption of state fishery management without a prior administrative hearing and that would expand preemption authority to a state's internal waters. The Chairmen supported the general concept of speeding up the present preemption procedure in order to address exigencies that may occur in the salmon fisheries within the jurisdiction of the Pacific Council, but did not support application of this accelerated process to all Council regions. The Chairmen were strongly opposed to expansion of preemption authority to internal waters.

7. Issue: Two-year Reauthorization Period

Recommendation: The Council Chairmen supported a reauthorization period longer than the proposed two years because a short reauthorization period may create an air of uncertainty within the fishing industry and make it difficult for fishermen to develop long-term plans. Reauthorization within two years would also require expenditure of additional government funds and could divert the Council's attention from the daily business of fishery management.

8. Issue: Council Budgets as Line Items

Recommendation: The Chairmen supported Senator Stevens' rationale for proposing, in S. 1245, that Council budgets be a line item in the President's budget (i.e., to ensure that Councils are treated as independent entities) but were not sure if the line item was the best approach. The Chairmen's ad-hoc budget committee will work with Senator Stevens' staff on this matter. A strong message should be sent by Congress to NMFS Central Office that all funds appropriated for the Councils should be disbursed to them with no extraction of commissions.

9. Issue: Joint Venture Permit Conditions

Recommendation: Because of an apparent reversal of opinion by General Counsel for Fisheries Jay Johnson, the ability to condition joint venture permits under the MFCMA is now being questioned. If it is necessary to amend the Act to do what the Councils have previously done, then the law should be changed.

S. 747 (by Sen. Lautenberg)

- A. Expand U.S. fishery management authority to include highly migratory species found within the U.S. FCZ.

Committee Recommendation: Support.

- B. Close loopholes in the full observer coverage program by preventing a foreign fishing vessel from receiving a fishing permit unless the vessel has adequate room with safe conditions for an observer and by requiring foreigners who wish to fish in the U.S. FCZ to submit and continually update plans of their vessels which will fish in U.S. waters.

Committee Recommendation: Support.

- C. Require Councils to consider the impact of their management schemes on the safety of vessels.

Committee Recommendation: Councils can do this under current MFCMA language.

- D. Require that each Council have a representative number of commercial fishermen and recreational fishermen and that all appointed Council members be both knowledgeable and experienced with regard to conservation and management of fishery resources.

Committee Recommendation: This provision should be amended to ensure representatives from the processing and support industries, and knowledgeable people from outside the fishing industry are not precluded from Council appointment.

- E. Provide the Councils' Executive Directors access to confidential fishery data.

Committee Recommendation: Council staff members responsible for FMP development and monitoring should have access to data, not the Executive Directors.

- F. Require specific habitat information in all FMPs. The information would include actions that may adversely affect fishery habitat and measures to conserve fishery habitat.

Committee Recommendation: No comment.

- G. Allow a Council to create a dislocation compensation program in conjunction with a limited access system. The program would be funded through fees paid by fishermen in the particular fishery with the limited access system. Those fees would compensate fishing vessel owners for loss or reduction in livelihood resulting from implementation of an access limitation system and could include vessel buy-back, vessel conversion or other programs to facilitate fleet reductions.

Committee Recommendation: Support the general concept.

- H. Require Federal agencies to respond to any recommendations made by a Council concerning fishery habitat within 60 days after receipt of the Council recommendations.

Committee Recommendation: The response should be forthcoming within 45 days after receipt of the Council recommendation.

- I. Require the National Marine Fisheries Service to establish and implement a formal regional habitat planning and coordination process.

Committee Recommendation: This is already being done.

- J. Limit the Secretary of Commerce's ability to assess a final civil penalty greater than the penalty first assessed by written notice.

Committee Recommendation: No comment.

- K. Appropriate \$69 million (of which not to exceed \$7.5 million is for the operation of the Councils) for each fiscal year 1986-1990 to carry out the purposes of the MFCMA.

Committee Recommendation: There should be annual increases in appropriations to reflect the rate of inflation and Councils should be provided with direct appropriations.

S. 1245 (by Sen. Stevens)

- A. Manage other species (straddling stocks) under the extraterritorial management concept currently applied to U.S. anadromous species.

Committee Recommendation: Support.

- B. Require the Secretary of State to expand GIFAs to include provisions that acknowledge each foreign nation's zone of exclusive fishery management authority and implement reciprocal fishing programs for U.S. fishermen in foreign waters.

Committee Recommendation: Support.

- C. Expand the criteria to be considered before Secretarial approval of foreign fishing permits and release of allocations to include whether a foreign fishing fleet utilizes U.S. support services.

Committee Recommendation: Support.

- D. Require the Secretary of State to negotiate within the framework of the INPFC to end the high seas intercept of U.S.-origin salmon.

Committee Recommendation: The Committee strongly supported this provision because it would establish as national policy U.S. opposition to the high seas interception of U.S. origin salmon.

- E. Provide for multinational symposia for the exchange of scientific information concerning all North Pacific fishing stocks.

Committee Recommendation: Support.

- F. Increase foreign fishing fees annually by 50 percent over the cost of administering the MFCMA.

Committee Recommendation: Support. This increase in foreign fishing fees would make U.S. fishery products more price competitive in world markets. The revenue generated by these fee increases should be used to support fishery management.

- G. Allow a reduction or elimination of a foreign nations TALFF if the U.S. Trade Representative determines that that foreign nation has a trade barrier to U.S. fish or fishery products that is unjustifiable, unreasonable or discriminatory.

Committee Recommendation: Support the concept of using fish allocation to remove trade barriers.

- H. Expand the scope of internal waters joint ventures in Alaska to the territorial sea if the Governor, after consultation with the North Pacific Fishery Management Council, determines the transfer of U.S.-harvested fish to a foreign vessel in internal waters would be impossible or unsafe because of physical conditions.

Committee Recommendation: Support.

- I. Delegate fishery management authority to the State of Alaska over all species in the federal intrusion areas of Southeast Alaska and Cook Inlet.

Committee Recommendation: Support.

- J. Reauthorize the MFCMA for two years at \$68,555,000 for FY 1986 and \$71,639,975 for FY 1987 and require that the budget for the Regional Councils is to be a line item in the President's budget.

Committee Recommendation: The reauthorization period should be four years with annual increases to reflect the rate of inflation. Direct appropriations to the Councils should be made in the same manner they are provided the Marine Mammal Commission. Changing the Council budget from a line item in NOAA's budget to a line item in the President's budget may not insulate it from those in the administration who oppose the Council system.

- K. Reduce directed foreign fishing in the NPFMC's region during the period 1986-1990 according to the following schedule:

1.
  - a. 1986 TALFF will be 60% of the 1985 TALFF;
  - b. 1987 TALFF will be 80% of the 1986 TALFF;
  - c. 1988 TALFF will be 60% of the 1986 TALFF;
  - d. 1989 TALFF will be 40% of the 1986 TALFF;
  - e. 1990 TALFF will be 20% of the 1986 TALFF.
2. There would be no TALFF after December 31, 1990.
3. The 1986 reduction will be placed into a reserve with 40% designated to JVP and 60% DAP. This reserve could sit unused for three years only. The reductions for 1987-1990 would not go into reserves.

Committee Recommendation: Instead of a statutory phase-out schedule, a deadline for removal of foreign fishing fleets should be established and the Council role in reducing TALFF should be strengthened to allow each Council to adopt its own phase-out schedule for each species it manages. The Councils should not be prohibited from reducing TALFF to zero before the statutory deadline if necessary to meet the needs of the domestic fleet. Congress should also give consideration to an eventual phase-out of joint ventures.

S. 1386 (by Senator Gorton)

A. TALFF Reductions

- (1) For a foreign nation that had at least a 65,000 mt allocation in any Councils' geographic area in 1985 -
  - (a) The foreign nation's allocation in 1986 will be 60% of the 1985 allocation (e.g., 1985 allocation = 200,000 mt, 1986 allocation = 120,000 mt).
  - (b) The foreign nation's 1987 allocation will be 66-2/3% of the 1986 allocation (e.g., 1986 allocation = 120,000 mt, 1987 allocation = 80,000 mt).
  - (c) The foreign nation's 1988 allocation will be 33-1/3% of the 1986 allocation (e.g., 1986 allocation = 120,000 mt, 1988 allocation = 40,000 mt).
  - (d) From 1989 on, the foreign nation's allocation is not to exceed the 1985 level for that nation with no allocation exceeding 65,000 mt. S. 1386 is silent on TALFF reduction schedules after 1988.

Committee Recommendation: Instead of a statutory phase-out schedule, a deadline for removal of foreign fishing fleets should be established and the Council role in reducing TALFF should be strengthened to allow each Council to adopt its own phase-out schedule for each species it manages. The Councils should not be prohibited from reducing TALFF to zero before the statutory deadline if necessary to meet the needs of the domestic fleet. Congress should also give consideration to an eventual phase-out of joint ventures.

- (2) For nations that had less than a 65,000 mt allocation in any Councils' geographic area in 1985, future allocations are to be made by the Secretary of State, after consultation with the appropriate Council, under the existing process described in Section 201(e) of the MFCMA. S. 1386 provides no specific reduction schedule for these nations: in fact, nothing in the bill would prohibit an increase in allocations for nations in this category.

Committee Recommendation: None.

B. Bilateral Agreements

- (1) Exceptions to the above-described reduction schedule may be provided through bilateral agreements. The Secretary of State in cooperation with the Secretary of Commerce (no Council role is provided) may enter into these agreements with a foreign country that has a TALFF of at least 65,000 mt in 1987. These agreements may run from 1987 through 1994 and must promote the development of the U.S. fishing industry. Before negotiating the agreements, the Secretary of State is to establish and consult with advisory committees composed of equal numbers of U.S. harvesters and U.S. processors from the appropriate geographical area. After 1994 no foreign country's allocation shall be more than 65,000 mt.

Committee Recommendation: Oppose the concept, but if bilateral agreements are to be negotiated, Councils should have at least a consultative if not a concurring role. The agreement should not last longer than two years.



### C. Reserves

- (1) With the exception of Pacific pollock, the annual reductions in TALFF are to be divided equally and placed into two reserve categories: JVP and DAP. Forty percent of the pollock reductions are to be placed in JVP reserve with the remainder going into DAP reserve. If not harvested outright, the reserves are to accumulate until used by the U.S. industry. If the need for JVP or DAP exceeds the amount in reserve, then TALFF shall be reduced accordingly, the above-described reduction schedules notwithstanding.

Committee Recommendation: Reserves should not be allowed to accumulate in an open-ended account. Accumulations on paper may not exist in the water because of biological fluctuations.

### D. Other Provisions

- (1) S. 1386 amends Section 306 regarding internal waters joint ventures by stating that a foreign nation cannot use internal waters joint ventures to circumvent the limit on allocations set out in the reduction schedules.

Committee Recommendation: Support.

- (2) Senator Gorton's proposal also amends the "basket clause" i.e., 201(e)(1)(E)(viii), in the list of factors the Secretary of State may consider in releasing allocations from, "such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate," to, "such other fishery matters as the Secretary of State, in cooperation with the Secretary, deems appropriate." (emphasis added)

Committee Recommendation: Support.

Prepared Statement  
by  
James O. Campbell, Chairman  
North Pacific Fishery Management Council

Senators Stevens and Gorton, members of the Committee - I am Jim Campbell, Chairman of the North Pacific Fishery Management Council. I greatly appreciate the opportunity to comment on the Senate bills reauthorizing the Magnuson Fishery Conservation and Management Act. The testimony I am providing represents the views of the North Pacific Fishery Management Council and will, generally, complement that offered by Bob Martin on behalf of the other Council chairmen.

I will address my comments to S. 1245 and S. 1386 since they both focus on the North Pacific Council's jurisdiction. For comments on S. 747 I will defer to Mr. Martin.

S. 1245

With only one suggested change, our Council strongly supports S. 1245. The bill contains provisions that will enhance both U.S. control over foreign fishing fleets and efforts to develop the domestic fishing industry as well as efforts to reduce duplicate management effort in the North Pacific Region.

Expansion of U.S. management authority over non-anadromous stocks that "straddle" the outer boundary of the FCZ, will provide an important management tool for the Councils. We need such a management authority to ensure that efforts to Americanize our fisheries are not frustrated by foreign fleets harvesting just outside the FCZ those stocks so important to the U.S. fleet. In our region, this authority would be applied to pollock, cod and herring stocks in the Bering Sea and may allow us to set true optimum yield levels for these stocks. Unless we are able to account for all harvest effort on a stock, establishment of accurate yield levels is a frustrating process.

Foreign fleets fishing outside the FCZ have also produced drastic impacts on North Pacific salmon stocks. Our Council strongly supports Section 3, subsection (d) of S. 1245 because it establishes as National policy U.S. opposition to the high seas interception of U.S.-origin salmon. This is especially relevant in light of recent actions by the Japanese land-based fleet targeting U.S.-origin salmon in disregard of International North Pacific Fishery Commission restrictions and U.S. law.

One of the major complaints we hear from fishermen is that the foreigners are getting our fish at bargain basement prices. S. 1245 addresses this problem by providing for substantial increases in foreign fishing fees. Currently those fees are supposed to be set at a level that covers the cost of management activity related to foreign fishing. While some recent reports question whether the U.S. is actually being reimbursed for these management costs it is clear that we are not being compensated for the true value of the resource. Increased foreign fees may allow the receipt of fair market value for our fishery resources as well as make U.S. fishery products more price competitive in world markets. The North Pacific Fishery Management Council recommends that revenues generated by fee increases be used to support federal fishery management.

Our Council also supports the concept of using fishery allocations to remove trade barriers by certifications of the U.S. Trade Representative. This proposal is another lever the U.S. will be able to use to guarantee broader access to world markets for its fishery products.

Development of the U.S. fishing industry was one of the main purposes behind enactment of the MFCMA. S. 1245 addresses this goal by strengthening the existing language on reciprocal fishing access to foreign stocks, and by linking direct foreign allocations to the use of U.S. support services. We must realize that the U.S. fishing industry is multi-faceted and not composed of just harvesters and processors. It is, therefore, incumbent upon us to ensure that, in exchange for foreign allocations, the entire spectrum of the domestic industry receives some benefit. Only by doing this will we provide for full development of the U.S. industry.

By delegating management authority to the State of Alaska in certain intrusion areas, S. 1245 will implement Congress' declaration of policy in passing the MFCMA that federal fishery management must be efficient and draw upon state management and enforcement capabilities. Under the bill, the State of Alaska will manage crab in the intrusion areas of Southeast Alaska and all species in the intrusion areas of Cook Inlet. There is no apparent need for federal fisheries management in these areas because there is no foreign fishing presence, vessels fishing in the areas are predominantly registered to the State of Alaska, and the fisheries in each general area are conducted throughout the State and intrusion waters. State management over all species in the intrusions would provide for uniform regulations in all areas inside the "surflines" in Southeast Alaska and inside Cook Inlet. The State of Alaska has more than adequate regulatory mechanisms and enforcement capability to assume the management responsibility and remove the need for expending federal resources. Those who oppose this delegation of management authority give as their main reason the desire not to create such a precedent; however that precedent was established last year when the MFCMA was amended to allow state management authority for all species other than crab in the intrusion areas of Southeast Alaska.

We, along with the other Councils, recognize the deficit burden under which Congress finds itself this year and are committed to do our part to reduce the cost of government where possible. We've reduced the number of North Pacific Council meetings from nine to five per year, the number of meetings held outside of Anchorage, and travel by plan team and staff members. We would like to see additional funds provided to allow updating of existing fishery management plans and funding of new research and management activities. Additional funding would also strengthen the Council's ability to develop long-range management strategies in order to better anticipate fishery management problems. The Council would also prefer a longer reauthorization period of four years, rather than the proposed two years. We accept however, the Senate's proposed funding level and reauthorization period in recognition of Congress' budgetary constraints.

Also in the matter of budgets, S. 1245 provides a separate line item for Council funding. The North Pacific Council appreciates this proposed solution to the problems that exist between the Councils and NMFS regarding Council budgets. Funding the Regional Councils through the Department of Commerce was

an appropriate way to reduce the administrative costs of the MFCMA; however, the approach the Department has taken in recent years to the Councils' budgets actually appears to have threatened the existence of the Council's as fishery management entities. While the Department has, over the past few years, proposed cutting their overall budgets by 10% and NMFS budgets by 35-40%, they have proposed reducing the Council budgets by 55-60%. Fortunately for the Councils, Congress has reversed those cuts but we are again faced with similar proposed cuts for FY1986.

These proposed budget reductions are evidence that the Councils have no advocate for adequate funding within the Department of Commerce, but yet the Councils are provided no meaningful role in drafting the fisheries budget. The Councils are not even allowed to review the budget documents until they have been released to the public; consequently, they are often placed in the absurd situation of being requested by NMFS to comment on a budget initiative they have not seen.

Senator Stevens, our Council is grateful for your interest in resolving problems between the Councils and NMFS but we believe that changing the Council's budget from a line item in NOAA's budget to a line item in the President's budget may not insulate it from those in the bureaucracy who oppose the Council system. We suggest, instead, that funding the Councils through direct appropriations like those provided to the Marine Mammal Commission (under Section 207 of the Marine Mammal Protection Act of 1972) would be clear evidence of Congressional intent that the Councils are to be independent entities. Direct appropriations would also remove the bureaucratic maze through which Councils must maneuver before appropriated funds are disbursed to them. Currently, Regional Council funding requests are reviewed by NMFS Region, NMFS Central Office, NOAA, OMB and the Department of Commerce's Financial Assistance Review Board. This process has caused Councils to delay payments of bills and staff salaries and is clearly not conducive to efficient operation of Council offices.

Some may be wary of providing the Councils with direct appropriations but we believe that it is an idea that deserves a two-year trial period. If it does not have the desired consequences, the process can be changed during the next reauthorization period.

Both the proposed amendment to S. 1245 and S. 1386 provide reduction schedules for directed foreign fishing in the federal waters off Alaska. The North Pacific Council realizes that there is widespread support in the U.S. fishing industry for some time-certain end to foreign fishing in U.S. waters and we have been committed to removal of foreign fleets from our jurisdictions at the earliest possible date. We believe we have made good progress in meeting this commitment. Examples of this progress may be found in the increase of domestic harvest of groundfish off Alaska from 2,000 metric tons in 1978 to a projected 1.2 million metric ton catch for this year (or 49% of the total groundfish catch for 1985 off Alaska). The Council also intends that there be no foreign allocations next year in the Gulf of Alaska and in the area within 20 miles of the Aleutian Islands.

While a statutorily-mandated phase-out has great appeal, we are concerned the proposals before the Committee may circumvent the Council process and may not necessarily provide the best development opportunities for the U.S. industry. If there is to be an amendment to the Act regarding phase out of foreign fishing we would suggest the establishment of a deadline for removal of foreign fleets and a strengthening of the Council's role in reducing TALFF to allow a Council to adopt its own phase-out schedule for each species it manages. The Councils should also not be prohibited from reducing TALFF to zero before the statutory deadline if necessary to meet the needs of the domestic fleet.

Annual automatic reductions of TALFF will maintain allocations among foreign nations at relative status quo levels. Councils would not be able to shift TALFF to the highest bidder in terms of fish and chips. This prohibition could hamper development of the domestic industry.

The assignment of TALFF reductions into reserves may promote U.S. development but may also create management problems if allowed to accumulate in an open-ended account for harvest at some future date. Since fishery stocks are dynamic, there is no guarantee that a reserve existing on paper will exist in the water. This could negatively impact U.S. fishermen who gear up to fish a "paper" reserve.

Bilateral fishing agreements may provide a way to guarantee the U.S. receives the best chips for its fish but our Council opposes those provisions in S. 1386 regarding such agreements because the Council process is completely bypassed. The Regional Councils are the proper forum for discussion of proposed bilateral agreements and Councils should be given at least a consultative role, if not a concurring role, in the agreement negotiation process.

Our Council also suggests that no bilateral agreement extend beyond the term of a GIFA (normally two years). Eight-year foreign fishing agreements, as allowed under S. 1386, may not adequately consider rapid development of the U.S. fishing industry.

We strongly support the provision in S. 1386 that amends the basket clause to focus solely on fishery matters. The fishing industry in our region has been long opposed to linking fishery allocations to non-fisheries trade issues and foreign policy concerns.

Again, we appreciate the opportunity to comment on the reauthorization legislation. The bills before the Committee exhibit a deep interest by the Senate in ensuring the purposes of the MFCMA are fulfilled.

1 Senator Stevens: Thank you.

2 We would like to work with you on the straddling thing,  
3 no question about that.

4 Ms. Sloan: Thank you.

5 Senator Stevens: The next witness, Jim Campbell.

6 Jim is the Chairman of the North Pacific Fisheries  
7 Management Council.

8 Mr. Campbell: Thank you, Senator Stevens, Senator  
9 Gorton, Senator Murkowski.

10 My testimony today represents the view of the North  
11 Pacific Council and will generally complement that offered  
12 later by Bob Martin of the Mid-Atlantic Council.

13 I will address my comments to S. 1245 and S. 1386, since  
14 they both focus on the North Pacific Council jurisdiction.  
15 For comments on S. 747, I defer to Bob Martin.

16 Our Council strongly supports S. 1245 because we believe  
17 it contains provisions that will enhance both U.S. control  
18 over foreign fishing fleets and efforts to develop the  
19 domestic fishing industry.

20 Expansion of U.S. management authority over stocks that  
21 straddle the outer boundary of the FCZ will ensure that  
22 Americanization of our fisheries is not hampered by foreign  
23 fleets harvesting just outside the zone those stocks so  
24 important to the U.S. industry.

25 This authority may also allow us to set true optimum

1 yield levels for those stocks. Establishment of accurate  
2 yield levels can be difficult unless we are able to account  
3 for all harvest stock, all effort on the stock.

4 Our Council believes it is extremely important to  
5 establish as national policy opposition to the high seas  
6 interception of U.S. origin salmon. This is especially  
7 relevant in the light of recent action as mentioned today by  
8 the Japanese land-based fleet targeting on our salmon.

9 I was interested -- I was in Taiwan, had an opportunity  
10 to meet over there with Taiwanese industry, and I was  
11 interested today to hear from Secretary Wolfe that they have  
12 come to an agreement. I wonder if they have agreed to  
13 furnish us catch information. At the time I was there, that  
14 was still not agreed to, and I wonder still if it is.

15 One of the major complaints we hear from fishermen is  
16 that the foreigners are getting our fish at bargain basement  
17 prices. S. 1245 addresses this problem by providing for  
18 substantial increases in foreign fees. We recommend that  
19 revenues generated by fee increases be used to support  
20 Federal fisheries management.

21 By linking direct foreign allocations to the additional  
22 use of U.S. support services, we recognize the U.S. fishing  
23 industry is multi-faceted, and by doing so derive the  
24 greatest possible benefit from foreign allocation.

25 As proposed in S. 1245, the delegation of management

1 authority to the State of Alaska in certain intrusion areas  
2 will reduce duplicate management effort in our region. There  
3 is no apparent need for Federal fisheries management in these  
4 areas, and the State has more than adequate regulatory  
5 mechanisms and enforcement capability to assume management  
6 responsibility and to remove the need for expending Federal  
7 resources.

8 We, along with the other Councils, recognize the deficit  
9 reduction burden under which Congress finds itself this year  
10 and are committed to do our part to reduce the cost to  
11 government where possible. We would like to see additional  
12 funds provided to allow updating existing fisheries  
13 management plans and funding new research activities.

14 We would also prefer a long reauthorization period, but  
15 we accept the Senate's proposed funding level and  
16 reauthorization period in recognition of the Congress funding  
17 constraints. But I want to point out that in our Council,  
18 for example, in the North Pacific, we have reduced our  
19 Council meetings from nine to five, we restrict some of our  
20 meetings to holding them in Anchorage rather than throughout  
21 the State, and we have had reductions in our programmatic  
22 fundings which are now at a current level for all Councils at  
23 \$50,000.

24 S. 1245 provides a separate line item for Council  
25 funding. The North Pacific Council appreciates this proposed



1 solution to the problems between the Councils and NMFS over  
2 Council budget. Funding the Council through the Department  
3 of Commerce was an attempt to reduce administrative cost of  
4 the MFCMA. However, the cuts in Council budgets the  
5 Department has proposed in recent years have threatened the  
6 very existence of of the Councils as fishery management  
7 entities. Fortunately, Congress has restored these funds,  
8 but we are again faced with similar proposals for Fiscal Year  
9 1986.

10 Senator Stevens, we are grateful to you for your interest  
11 in resolving these problems, and know that you will agree  
12 that changing the Council's budget to a line item in the  
13 President's budge will not insulate it from those who oppose  
14 the Council system. We suggest that we might look at direct  
15 appropriations such as those provided to the Marine Mammal  
16 Commission -- would be clear evidence of congressional intent  
17 that the Councils are to be independent entities.

18 We realize that there is widespread support in the U.S.  
19 fishing industry for some time certain end to foreign fishing  
20 in the U.S. waters and have been committed to the removal of  
21 foreign fleets from our jurisdiction at the earliest possible  
22 date.

23 We believe we have made good progress in making this  
24 commitment and cite as examples the increase in the domestic  
25 harvest of groundfish off Alaska from 2,000 metric tons in

1 1977 to a projected 1.2 million metric tons catch this year.  
2 And our proposal is that there would be no foreign allocation  
3 next year in the Gulf of Alaska and in the area within 20  
4 miles off the Aleutian Islands.

5 I think it is important that I just take a moment to  
6 explain how we came about with what we are talking about,  
7 these two new surimi plants that are going to be in Alaska.  
8 In December 1984, the Council decided zero TALFF for the  
9 Gulf. In early 1985, the industry had a meeting in Seattle  
10 and they came back to the Council and said that we need your  
11 help; we want you to open up the Gulf again to the Japanese  
12 fishing industry, and in return for that we have this  
13 agreement.

14 We concurred in that. That is our job, and we were  
15 delighted that we could accommodate that and open up the  
16 Gulf, and for that reason we had the agreement, the  
17 industry-to-industry with the Japanese, but what I am  
18 pointing out is the need to be flexible. I think you have to  
19 be flexible in this fisheries business. Nothing is certain.

20 If you excuse me, I seem to be one of the few Alaskans  
21 here. If I could take just one more minute, Senator.

22 We are concerned that the phaseout proposal in 1386 which  
23 mandates annual reduction in TALFF on a nation-by-nation  
24 basis may maintain allocations at relative status quo levels  
25 and deprive the Council of the flexibility needed to shift

1 allocations to the highest bidders in terms of fish and  
2 chips.

3 We would suggest instead the establishment of a deadline  
4 for removal of foreign fleets and a strengthening of the  
5 Council role in reducing TALFF, so a Council could adopt its  
6 own phaseout schedule. The phaseout described in 1245  
7 provides a Council role in TALFF reduction. However, the  
8 amendment appears to give the Secretary of State the  
9 authority to determine whether a deviation from the reduction  
10 schedule may be beneficial to the U.S.

11 We suggest that the Council be given either concurring or  
12 consulting role in these determinations or the addition of a  
13 provision that the Secretarial action may not be taken unless  
14 it is in response to Council action.

15 We oppose bilateral agreements, and we are concerned that  
16 no mention is made in either of these bills about a phaseout  
17 of joint ventures. This issue should be given to the  
18 committee's attention in the near future. Joint ventures may  
19 be a necessary step in the development of our fishing  
20 industry, but we are concerned that they become an  
21 institutionalized impediment to full Americanization.

22 Thank you.

23 [The statment follows:]  
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25

1 yet to allow for the domestic development of the bottom  
2 fishery. This is important.

3 You know, a lot of people say, well, you salmon  
4 fishermen, you are just trying to impede the development of  
5 the bottom fishery. We think it is important. We think that  
6 there are opportunities for the western Alaska villages, you  
7 know. We see a possibility of maybe developing a small  
8 mosquito fleet of small skiffs to develop to a processor  
9 where you would have 35 or 36 small fleets. These would be  
10 income opportunities for our people. I mean it may be five  
11 or six years away, but they are interested in trying to get  
12 into this bottom fishery thing, too. Unfortunately, they  
13 would not have the capital to go out and buy a large  
14 trawler.

15 Senator Stevens: We will stop right there.

16 Mr. Mitchell: Thank you.

17 Senator Stevens: Thank you very much. We appreciate  
18 your coming.

19 I would hope, Jim, that we can keep in close touch with  
20 the Regional Councils as this bill continues because,  
21 obviously, they are going to administer a great portion of it,  
22 if it does pass.

23 Mr. Campbell: Thank you. You have our full cooperation.

24 Just one comment I might add. In my business, I find it  
25 very difficult to plan beyond three years. Five years is

1 completely impossible. If we can set goals and move towards  
2 them -- but to legislate them somehow bothers me.

3 Senator Stevens: Well, there is building a consensus for  
4 some compromise to deal with two or three years and see what,  
5 happens in those years, and if it does not work, we will  
6 close the gate.

7 But I do think that it is going to take some time to work  
8 this out, and it is going to be essential that the Regional  
9 Council be part of that process if it is going to work  
10 properly.

11 We will recess until two o'clock.

12 [Whereupon, at 12:51 o'clock p.m. the hearing recessed,  
13 to reconvene at 2:00 o'clock p.m., this same day.]

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**SUMMARY TESTIMONY OFFERED BY ROBERT L. MARTIN  
ON BEHALF OF THE CHAIRMEN OF THE  
REGIONAL FISHERY MANAGEMENT COUNCILS**

Our testimony not only comments on the specific issues of S.747, S.1245, and S.1386, but proposes additional changes to the Magnuson Act which the Council Chairmen feel are necessary and which are offered in the spirit of making the fishery management process more efficient and effective. We are also including a copy of testimony that was presented to the House Subcommittee on Fisheries and Wildlife Conservation and the Environment on March 26, 1985 for your perusal.

We support the deletion of the phrase "highly migratory species" and the inclusion of tuna under FCMA management.

Fixed phase out programs for foreign fishing are unnecessary and undesirable for the Atlantic area. We believe the Councils can accomplish a phase out that is more consistent with the best interests of U.S. fishermen.

Bilateral fishing agreements, if established, should include "concurrence of Councils" and be of a duration consistent with the development of a particular species.

We support full observer coverage and that adequate, safe quarters and conditions must be provided to observers before a foreign vessel is permitted to fish in the zone.

We strongly support a change in access to confidential data so the Councils may effectively carry out their assigned tasks.

We support the inclusion of habitat conservation in management plans as long as it does not become a basis for the rejection of a plan.

We disapprove limiting the imposition of a higher penalty, as a result of an Administrative hearing, than that first assessed by written notice.

We support the appropriations levels indicated in S.1245, along with the longer period included in S.747. Councils should receive direct funds or all funds allocated should be directed to be passed to the Councils.

The Councils need a greater involvement in the permitting of foreign fishing, Section 204.

TESTIMONY ON BEHALF OF THE FISHERY MANAGEMENT COUNCIL CHAIRMEN  
ON THE REAUTHORIZATION OF THE FCMA

to the

SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

by Robert L. Martin

July 23, 1985

Mr. Chairman, members of the Committee, I am Robert Martin, Chairman of the Mid-Atlantic Fishery Management Council, speaking today on behalf of the Chairmen of the eight Fishery Management Councils. Mr. Campbell of the North Pacific Council has commented on items of particular concern to his Council.

We appreciate the opportunity to testify on the reauthorization of the FCMA. The testimony I am providing represents the position of the Council Chairmen and most of the Councils.

Regarding S.1245 and S.1386, Section 3, "Straddling Stock", we assume this pertains to West Coast fisheries. Is there a potential conflict with this definition and highly migratory species?

We support S.747 in the deletion from the Act of the exclusion clause for highly migratory species. This position is not motivated by a desire to expand our areas of authority to cover species highly migratory in nature but by our concern that the exclusion of tunas place a disproportionate burden on U.S. fishermen for conservation of managed species that are heavily impacted by foreign tuna vessels.

As an alternative, we suggest the following language be added to the end of Section 103, which currently exempts highly migratory species for management: "unless the taking of the highly migratory species within the Exclusive Conservation Zone results in excessive bycatch of managed species or would place a disproportionate burden on U.S. fishermen for the conservation of a managed species. The Secretary shall consider the recommendation of the appropriate Council or Councils in making this decision."

We are aware that the current U.S. policy supports international management of these resources. We are not asking for reversal of this policy, but only amendments of it where tuna fishing in our waters adversely affects U.S. fishermen, as in the Gulf, Atlantic and Western Pacific. For example, resumption of the level of Japanese tuna fishing effort that occurred in the late 1970s and early 1980s in the Gulf and Atlantic would result in significant bycatches of billfish and swordfish, which are currently overfished. It would also result in declines in the availability and abundance of billfish for our fishermen as a result of bycatch mortality, which is more than 60 percent for blue marlin. If we are to effectively manage those species under the Council's jurisdiction, we must be able to minimize all fishing activities which negatively impact on the managed species.

The foreign fishing phase out provision in S.1386 apparently does not apply to Council areas where the TALFF to a specific nation is less than 65,000 mt. Is that correct?

We oppose phase outs, either timed or monetary, as proposed in S.1245. The Councils oppose the phase out provisions proposed in S.1386, 201(d) and the mandatory phase out proposed in 204(b)(10) by S.1245 to the extent they would impact the Atlantic Coast. These measures are not necessary and as proposed will result in loss of shoreside and joint venture sales by East Coast fishermen. The mackerel fishery of the Northwest Atlantic needs the participation of foreign nations to develop. There is an approximate 600,000 mt world market for the Atlantic mackerel. Most of that amount is harvested in Eastern Atlantic waters.



There has been a recent down trend in the Eastern Atlantic stocks that has resulted in our being able to sell to joint venture and limited shoreside produced product in conjunction with a directed fishery (TALFF). The joint ventures and shoreside purchases are the result of Council's policies and pressure applied to purchase in exchange for TALFF. The bulk of these come at a time of the year when our fishermen most need the income (late winter, early spring). There are mechanisms that can effectively be used to reduce TALFF. We have set low OYs in order to encourage the foreign nations to comply with the Mid-Atlantic and New England Council's policy on joint ventures and purchases. We have increased sales by withholding product from directed fisheries until purchase commitments were made. We now have markets for our butterfish, which was once largely a directed foreign fishery. We have brought squid to the point that we can produce quality products for sale and no longer must depend on the granting of large TALFFs to stimulate sales. In fact, this product should not require future TALFFs in order for us to sell into the traditional European markets. The mackerel fishery, however, still needs assistance and will require fish and chips concepts to assist our fishermen in utilizing this fishery. We have increased the stocks from approximately 200,000 mt in 1977 to over 1,000,000 mt in 1984, while increasing our participation in the world market. We must retain the present flexibility on TALFF and fish and chips if we are to expect future sales from this fishery.

We do not oppose reasonable increases in foreign fishing fees, only those that would have the effect of a phase out, as is the case in Section 204.b.(10) of S.1245. We agree with the testimony of Jim Campbell to the use of any increased fee, that is that the increased revenues be used to support fishery management.

We feel the creation of reserves, in Section 201(d)(4)(A) of S.1386, with guidelines to be allocated to US harvesters on the basis of shoreside landed product or joint venture product is dangerous. The harvesters who have commented to us feel this would make them subservant to the processors as to price paid, etc. since the fish would be specified for that purpose only. Who is to divide the fleets between joint venture and shoreside deliveries? On the other hand, joint ventures should not interfere with demonstrated shoreside capability if we are to realize the maximum return for our stocks.

The shoreside operation should have all the product it can handle. Is 50% or 60% enough?

We support the changes on observer coverage proposed in S.747 to Section 201(i) and 204(b). It is certainly reasonable to require adequate space and safe conditions for an observer. We agree that 100% observer coverage is necessary.

The Councils do not support the bilateral agreement provision referred to in either S.1245 or S.1386. If these measures are to be made part of the Magnuson Act they should contain the provision for "concurrence by the appropriate Council", as well as by the Secretary. We need to assure that the State Department officials confer with the Councils on joint ventures before granting allocations. A number of Councils are attempting to work out long-term joint venture policies which benefit our fishermen. Unfortunately, these policies are not always considered by State Department representatives.

We support the language in S.1386 on the "basket clause" which would apply to

Section 201(e)(1)(E)(viii).

We support the change to 201(e)(1)(E)(viii) proposed by S.1386 or the following language: "(viii) such other matters as the Secretary of State, in cooperation with the Secretary, and after conferring with appropriate Fishery Management Council or Councils, deems appropriate."

The S.747 proposal regarding vessel safety in Section 301(a)(6) is, in our opinion, unnecessary as the Councils are considering vessel safety in their plans. We do not object, however, to the change.

S.747, in changes to Section 302(b)(2)(A)(2) and particularly those proposed by the House Committee, could create a greater problem since current membership seems to be more the result of interpretations and political maneuvering rather than non-compliance with the Act. If the strict balance implied in the House Committee's recommendation become law, it will probably require more than one round of nominations from the Governors to achieve such a balance. Are the States to be notified that it is their turn to nominate a recreational fisherman or commercial harvester or conservationist? This could upset the current distribution of at large members, which may prove to be of a greater concern than the specific qualification of the individual representing a state. Where does a commercial user fit in under the House version?

We support the intent of the changes to Section 303(a)(5) to resolve the current problems of Councils not receiving adequate data due to the interpretation and policies of the Secretary under Section 303(d).

Another approach would be to amend 303(d) to read: "CONFIDENTIALITY OF STATISTICS. Any statistics submitted to the Secretary by any person in compliance with any requirement under Subsection (a)(5) shall be confidential and shall not be disclosed except to those NMFS personnel and Council employees responsible for plan development and monitoring or when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Any release of aggregated statistics by Council staff shall be cleared with the appropriate NMFS Data Base Administrator."

We support the intent of S.747 to include a habitat section in fishery management plans. We believe some changes are necessary, however. We suggest Section 303(f)(2) be changed to read: "(2) When existing plans are amended the habitat requirement shall apply."

It would be very expensive to modify all present plans and the gain would be minimal since very little factual data exists at the present time.

Section 303(f)(3) should have a period after the word habitat. The section would then read: "The Secretary may not disapprove a management plan which contains incomplete information on a habitat".

In the case of proposed federal agency action, a response 60 days after receipt of

Council recommendations may be after the final action was taken, therefore, timely response is necessary. The habitat section should not be used as a basis for plan rejection. Some states have expressed concern that strict application of this section in internal waters could be pre-emptive. We would prefer Section 303(f)(6) require a timely response (not to exceed 45 days) rather than the 60 days on line 22 of S.747.

We support the change proposed in S.747 to establish a vessel dislocation program. We feel that interstate fisheries commissions should be added to 303(g)(1).

S.747 proposes to change Section 308(a) of the MFCMA to limit the authority of the Secretary to assess a final civil penalty greater than that first assessed by written notice. We do not support this measure. The Secretary's increase would be as a result of a hearing before an Administrative Law Judge after an opportunity for all facts of the case to be fully considered. An appeal may be made to District Court.

We support the longer term of the authorizations as proposed in S.747, but feel the increasing amounts contained in S.1245 are more appropriate. We would suggest that \$69,000,000 be provided for FY 1986 with at least \$7,500,000 for the operation of the Councils. The appropriation should increase annually as the cost of living increases. The Councils have been handicapped by the level funding received in the recent past in that they have had to suffer reductions in staff with, in many instances, increases in workload; reductions in the number of Council, Advisory Panel, Scientific and Statistical Committee, and various species Committees meetings, as well as other pertinent meetings arranged by others but which would be beneficial to the fisheries if the Councils were able to participate; all of which has resulted in some delay in the production of plans and a general slow-down of the Council planning process.

We feel that reauthorization should be at least four years rather than two years due to the fact that a task force effort between NOAA and the Councils has just been initiated to review the present law, policies, and practices and make recommendations for changes. A longer reauthorization would not preclude technical amendments to the Act from being enacted at any time such amendment appears useful. U.S. fishermen are placed at a disadvantage in developing their plans when they are unsure what fisheries policies are to be in the near future. Reauthorization for the extended period provides the fishing constituency with some degree of assurance that the system will be in existence for that period and allows them to make the business decisions or investments necessary to better utilize our fishery resources. A shorter reauthorization period, we feel, will raise concerns in the financial community over the advisability of committing capital for such fisheries development. Additionally, reauthorization within a two year period necessarily requires the involvement of Council time and expense that diverts the Councils from their mandated tasks under the Act. A four to five year reauthorization would provide greater efficiency and continuity in fisheries management, plan development, and plan monitoring.

S.1245 addresses part of the problem by requiring that the President's budget include a specific statement as to the amount obligated or expended in the most recently completed fiscal year. The Councils believe it would be more appropriate that the Council funds are made a line item in the budget and, therefore, not

subject to change or after the fact reporting.

We would also like to take this opportunity to comment on other issues the Council Chairmen feel should be addressed in the reauthorization legislation in order to permit the Councils to better accomplish their responsibilities under the Act. The Council Chairmen suggested changes are in bold print.

The Councils believe it would be of great benefit to the Council system to include language under Section 2 of the FCMA setting forth Congressional intent on the respective roles of the Councils and DOC/NOAA/NMFS. From previous Congressional oversight reports we understand that we are independent entities with specifically designed tasks and responsibilities. Unfortunately, administrative interpretation of the Act continues to put us into a subordinate or advisory role to DOC. The recent Inspector General Draft Reports (October, 1985 and February, 1985) are prime examples of such interpretation.

Many of the Councils have become deeply involved in joint ventures. Foreign fishing in our waters is of grave concern to most U.S. fishermen. We, therefore, request consideration of the following changes in that regard:

Change 201(e)(1)(A) to read: "The Secretary of State, in cooperation with the Secretary, and **after conferring with the appropriate Council or Councils** shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States."

201(e)(1)(D)(iii) to read: "(iii) if it is consistent with permit conditions imposed by the Secretary in support of Council recommendations in relation to an allocation as part of a joint venture."

We recommend the following changes to Section 204 of FCMA:

Change 204(a)(2) to read: "Forms. The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating **and the appropriate Fishery Management Councils where joint ventures are to be considered**, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application."

Change 204(b)(6)(A) to read: "After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State, **the appropriate fishery management councils**, and with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, **in whole or in part** and subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirement of this Act."

Change 204(b)(7)(F) to read: "(F) Any other condition and restriction that the Secretary prescribes as necessary and appropriate for carrying out the purposes of policy of this Act."

Change 204(b)(9) to read: "(9) Disapproval of Applications. If the Secretary does not approve an application, or any part of an application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefore. Such foreign nation, after taking into consideration the reasons for the disapproval, may submit a revised application under this subsection.

Our first suggestion is to insure that the Secretary consults with the appropriate Council in developing permit application forms for foreign nationals engaged in joint ventures to assure we get those data necessary to monitor this fishing activity and assess the potential for better joint venture trade-offs. We similarly feel the appropriate Councils should be conferred with prior to approval of permits, since we are closely monitoring the foreign fishery activity and its impact on domestic fishermen.

We recommend the following language be inserted at the end of 205(a)(1) which provides for import prohibitions: "or (C) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for species traditionally harvested off that nation by United States vessels, if a surplus of that species exists beyond the harvest capacity of that nation, or (D) refuses to allow U.S. (owned) vessels to fish for species, for which there is a surplus greater than the harvest capacity of that nation, under joint ventures with its nationals;"

We feel that such language in the import prohibition section would help in renegotiating entry of U.S. vessels into Latin American or other fisheries, where they have traditionally fished and where a surplus obviously exists.

We recommend the following changes to subsection 302(f):

Change 302(f)(1) to read: "Each Council may appoint, and assign duties to, an executive director and such other full- and part-time employees as the Councils determines are necessary to the performance of its functions."

Add to beginning of subparagraphs 302(f)(3) and 302(f)(4): "Upon the request of any Council".

Add to end of 302(f)(5): , including catch data.

The first of these proposed changes is related to our interpretation of Congressional oversight reports that the Councils are independent entities from Department of Commerce and are to be staffed by nonfederal employees. We feel that we have acted responsibly in establishing our staffs by numbers and by discipline, and that the Councils should not be staffed by NMFS employees, unless by concurrence with the affected Council. We, therefore, have proposed these amendments which would resolve this issue and relieve us of the continual DOC audit comments to the contrary. The third change was suggested to assure that we get the data related to foreign catches, which has often been denied us due to confidentiality or that, upon occasion, we must get from the foreign nation.

302(f)(7) should be changed if the Councils are granted an independent or semi-independent status. In that event, subsection (7) should be modified to provide that "Each Council shall pay", etc.

Subparagraph 302(g)(3) should be changed to read: "18 U.S.C. Section 208 shall not apply to the Councils, or to the scientific and statistical committees or to the advisory panels of the Councils."

Subparagraph 302(h)(1) should be changed to read: prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority that the Council determines is in need of conservation and management, and, from time to time, such amendments to each such plan as are necessary;

We recommend the addition of a new subparagraph 302(h)(7) to read: "(7) if it determines that it is appropriate, comment on or make recommendations concerning any activity by any person or group or by any state or Federal agency that directly or indirectly impacts upon any fishery resource for which the Council has responsibility. Within 45 days of receiving such comment or recommendations the head of any Federal agency shall respond to the Council fully and in detail, stating how such comment or recommendation will be addressed, including plans for mitigation for losses resulting from an adverse action that effects a fishery managed under a FMP."

We would also suggest that language should be inserted that will make the NOAA General Counsel opinion on conflict of interest apply to Council members, Scientific and Statistical Committee members and Advisory Panel members.

We feel the following amended language to subparagraph 302(i)(3)(A) would be beneficial:

"(3)(A) Each Council, Scientific and Statistical Committee, and Advisory Panel

(i) shall close any meeting, or partion thereof, that concerns

(I) matters or information that bears a national security classification; or

(II) confidential statistics released by the Secretary under section 303(d); and"

We recommend changes to Section 303(b) providing for discretionary provisions of fishery management plans as follows:

Change 303(b)(1) to read: "require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any person or fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone; "for Secretary prepared plans Council concurrence on permit and fee provisions is required."

Add a new subparagraph to 303(b) to read: "require the collection of information by utilizing on board scientific technicians, in lieu of submission of data by the vessel owner pursuant to section 303(a)(5), provided the vessel can accommodate housing the technician in the crew's quarters. The technician shall not be responsible for compliance monitoring or enforcement, and information collected would be confidential pursuant to section 303(d). (Comment: A problem exists with the liability that can be incurred by a vessel in carrying the observer. This must be addressed and will most likely require changes to the Jones Act.)"

We recommend that fishery management plans be allowed to permit persons as well as vessels because in some fisheries, vessels are not used (e.g. pound nets or fish traps off oil rigs) and in some fisheries, the permittee hires different vessels at different times (e.g., pharmaceutical companies harvesting coral). We feel that the Councils should concur with permit and fee requirements of fishery management plans regulating domestic fishermen prepared by the Secretary before they are implemented in order to allow maximum public participation in that decision.

We would also suggest a new subparagraph 303(e)(2) to read: "If the Secretary determines that it is more cost effective and efficient to combine the data reporting requirements of various fishery management plans, or that such action would result in better and more standardized collection of information, or that such action would reduce the reporting burden on fishermen, the Secretary may prepare a generic data collection plan. In the preparation of such plan, the Secretary may include data requirements for fisheries that he anticipates may require management, as well as for fisheries managed under fishery management plans. The Secretary shall confer with the affected Councils and states in the development of the plan, or may request the Councils to develop the plan. Plans may include a requirement for permits pursuant to section 303(b)(1), with concurrence of the affected Councils. Approval of plans and implementing regulations shall be pursuant to the provisions of sections 304(a) and (b) of sections 305(c), (g), and (h)."

It is suggested that the following language be added to the end of subparagraph 304(e): "The Laboratory Directors of National Marine Fisheries Service shall confer with the Councils annually in order to incorporate this fishery research into the laboratory programs and budgets."

Some Regional Directors have cast a dissenting vote when a unanimous vote is required for initiation of emergency actions by a Council, not on the issue, but to retain the Secretary's option to take independent action, therefore, the following changes are recommended:

Change 305(e)(2)(A) to read: "(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, with the exception of the Regional Director, requests the taking of such action; and"

Change 305(e)(2)(B) to read: "(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, with the exception of the Regional Director,

requests the taking of such action."

We suggest a new subparagraph 305(f) to read: "(f) ACTIONS BY NOTICE. Fishery management plans may contain procedures for adjusting management provisions by the Secretary by Notice in the Federal Register. Such procedures may be utilized for modifying fishing seasons, fishing zones, total allowable catch levels, quotas, mesh sizes, other gear limitations, limits on catches by vessels or fishermen, and other measures required to prevent overfishing or to achieve optimum yield. Regulations proposed by the Secretary under such procedures for fishery management plans implemented under paragraph (c) of this section shall be published in the Federal Register for public review and shall not be subject to approval under the provisions of the National Environmental Protection Act (16 U.S.C. ), the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Coastal Zone Management Act (16 U.S.C. ), the Marine Mammal Protection Act (16 U.S.C. 1362), and the Executive Order 12291 if the provisions of the procedure were previously approved under this applicable law during implementation."

We also recommend a new subparagraph 305(i) to read: "(i) Exclusion from Certain Laws. The fishery management plans are exempted from compliance with the provisions of the National Environmental Protection Act (16 U.S.C.) in that the plan provisions do not alter the environment in a detrimental manner and public review and comment is provided for under this Act."

In complying with provisions of FCMA, the Executive Orders and other applicable law, we satisfy the requirements of NEPA including the public participation and notice, specification of impacts and alternatives, and other requirements related to human environment. Fishery management plans do not alter the physical environment in a detrimental way and usually benefit the ecosystem.

We feel a new section 313 would be beneficial. Said section to be as follows:  
"SECTION 313. CONSERVATION AND MANAGEMENT FUND. There shall be established a fund entitled the conservation and management fund into which shall be transferred funds from penalties assessed by the Secretary or by any court of the United States for offenses under sections 308 and 309 and proceeds from civil forfeitures under section 310. The Secretary is authorized to utilize the fund for purposes of:

- "(A) enforcing the provisions of fishery management plans;
- "(B) providing administrative and programmatic support for Councils in developing, monitoring, and operating fishery management plans; and
- "(C) research and data collection in support of fishery management plans.

We feel that Section 401 could be deleted in its entirety. The remaining sections could then be renumbered accordingly.

Again, we appreciate this opportunity to comment on the reauthorization of the FCMA and to put forth our suggestions for technical amendments that we feel will be of great benefit in improving the management process under the Act. We appreciate the interest you have shown in U.S. fishermen and solicit your continue support.



## Union Calendar No. 112

99TH CONGRESS  
1ST SESSION

# H. R. 1533

[Report No. 99-165]

To improve fishery conservation and management.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 1985

Mr. BREAU (for himself, Mr. YOUNG of Alaska, and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

JUNE 10, 1985

Additional sponsor: Mr. HUGHES

JUNE 10, 1985

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill see copy of bill as introduced on March 19, 1985]

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## A BILL

To improve fishery conservation and management.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REFERENCE.**

2 *Whenever in this Act an amendment or repeal is ex-*  
3 *pressed in terms of an amendment to, or repeal of, a title,*  
4 *section, subsection, paragraph, or other provision, the refer-*  
5 *ence shall be considered to be made to a title, section, subsec-*  
6 *tion, paragraph, or other provision of the Act entitled "An*  
7 *Act to provide for the conservation and management of the*  
8 *fisheries, and for other purposes", approved April 13, 1976*  
9 *(Public Law 94-265, 90 Stat. 331 et seq.).*

10 **SEC. 2. UNITED STATES RIGHTS AND AUTHORITY REGARDING**  
11 **FISH AND FISHERY RESOURCES WITHIN THE EX-**  
12 **CLUSIVE ECONOMIC ZONE.**

13 **(a) DEFINITION OF EXCLUSIVE ECONOMIC ZONE.—**

14 *Section 3 (16 U.S.C 1802) is amended—*

15 *(1) by striking out paragraph (8);*

16 *(2) by redesignating paragraphs (6) and (7) as*  
17 *paragraphs (7) and (8), respectively; and*

18 *(3) by inserting immediately after paragraph (5)*  
19 *the following new paragraph:*

20 *"(6) The term 'exclusive economic zone' means*  
21 *the zone established by Proclamation Numbered 5030,*  
22 *dated March 10, 1983. For purposes of applying this*  
23 *Act, the inner boundary of that zone is a line cotermi-*  
24 *nous with the seaward boundary of each of the coastal*  
25 *States."*

1       **(b) AUTHORITY REGARDING EXCLUSIVE ECONOMIC**  
2 **ZONE.**—*Title I (16 U.S.C. 1811–1813) is amended to read*  
3 *as follows:*

4 **“TITLE I—UNITED STATES RIGHTS AND AU-**  
5 **THORITY REGARDING FISH AND FISHERY**  
6 **RESOURCES**

7 **“SEC. 101. UNITED STATES SOVEREIGN RIGHTS TO FISH AND**  
8 **FISHERY MANAGEMENT AUTHORITY.**

9       **“(a) IN THE EXCLUSIVE ECONOMIC ZONE.**—*Except*  
10 *as provided in section 102, the United States claims, and*  
11 *will exercise in the manner provided for in this Act, sover-*  
12 *eign rights and exclusive fishery management authority over*  
13 *all fish, and all Continental Shelf fishery resources, within*  
14 *the exclusive economic zone.*

15       **“(b) BEYOND THE EXCLUSIVE ECONOMIC ZONE.**—  
16 *The United States claims, and will exercise in the manner*  
17 *provided for in this Act, exclusive fishery management au-*  
18 *thority over the following:*

19               **“(1) All anadromous species throughout the mi-**  
20 *gratory range of each such species beyond the exclusive*  
21 *economic zone; except that that management authority*  
22 *does not extend to any such species during the time*  
23 *they are found within any foreign nation’s territorial*  
24 *sea or exclusive economic zone (or the equivalent), to*

1       *the extent that that sea or zone is recognized by the*  
2       *United States.*

3           “(2) *All Continental Shelf fishery resources*  
4       *beyond the exclusive economic zone.*

5       **“SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES.**

6           *“The sovereign rights and exclusive fishery manage-*  
7       *ment authority asserted by the United States under section*  
8       *101 over fish do not include, and may not be construed to*  
9       *extend to, highly migratory species of fish.”.*

10       **(c) CONFORMING AMENDMENTS.—***The Act referred to*  
11       *in section 1 is amended—*

12           (1) *by amending section 2—*

13               (A) *by amending paragraph (1) of subsection*

14               (i) *to read as follows:*

15                   “(1) *to take immediate action to conserve and*  
16       *manage the fishery resources found off the coasts of the*  
17       *United States, and the anadromous species and Conti-*  
18       *ental Shelf fishery resources of the United States, by*  
19       *exercising (A) sovereign rights for the purposes of ex-*  
20       *ploring, exploiting, conserving, and managing all fish*  
21       *except highly migratory species, within the exclusive*  
22       *economic zone established by Presidential Proclama-*  
23       *tion 5030, dated March 10, 1983, and (B) exclusive*  
24       *fishery management authority beyond the exclusive*

1 *economic zone over such anadromous species and Con-*  
 2 *tinental Shelf fishery resources;”, and*

3 *(B) by amending paragraph (5) of subsection*  
 4 *(c) to read as follows:*

5 *“(5) to support and encourage active United*  
 6 *States efforts to obtain internationally acceptable*  
 7 *agreements which provide for effective conservation and*  
 8 *management of fishery resources.”,*

9 *(2) by striking out “fishery conservation zone”*  
 10 *each place it appears therein and inserting in lieu*  
 11 *thereof “exclusive economic zone”; and*

12 *(3) by amending the entry for title I in the table*  
 13 *of contents to read as follows:*

*“TITLE I—UNITED STATES RIGHTS AND AUTHORITY  
 REGARDING FISH AND FISHERY RESOURCES*

*“Sec. 101. United States sovereign rights to fish and fishery management author-  
 ity.*

*“Sec. 102. Exclusion for highly migratory species.”.*

14 **SEC. 3. BILATERAL AGREEMENTS REGARDING FOREIGN FISH-**  
 15 **ING.**

16 *Section 201(e) (16 U.S.C. 1821(e)) is amended—*

17 *(1) by striking out clause (viii) of subsection*  
 18 *(e)(1)(E) and inserting in lieu thereof the following:*

19 *“(viii) whether, and to what extent, such nation is*  
 20 *extending to vessels of the United States substantially*  
 21 *the same fishing privileges with respect to fishery re-*  
 22 *sources under its authority as the United States ex-*

1 tends to vessels of that nation with respect to fishery  
2 resources under United States authority; and

3 “(ix) such other matters pertaining to the conser-  
4 vation of living marine resources as the Secretary of  
5 State, in cooperation with the Secretary, considers ap-  
6 propriate.”;

7 (2) by inserting “or (3)” after “paragraph (1)” in  
8 paragraph (2)(B); and

9 (3) by adding at the end thereof the following new  
10 paragraph:

11 “(3)(A) Subject to subparagraph (C), the Secre-  
12 tary of State may initiate and conduct negotiations  
13 with any foreign nation, with which there is in effect a  
14 governing international fishery agreement, for the pur-  
15 pose of entering into a bilateral agreement that—

16 “(i) is effective for all, or any portion, of the  
17 period in which the governing international fish-  
18 ery agreement is in effect;

19 “(ii) requires each party to implement  
20 during the effective period of the bilateral agree-  
21 ment the respective obligations referred to in sub-  
22 paragraph (B);

23 “(iii) contains such other understandings  
24 and commitments on the part of the parties as

1           *may be necessary or appropriate to accomplish the*  
2           *purposes of the bilateral agreement; and*

3           *“(iv) provides, and specifies the procedures,*  
4           *for the resolution of disputes that may arise with*  
5           *respect to the exercise of the rights and obligations*  
6           *of the parties under the bilateral agreement.*

7           *“(B) A bilateral agreement entered into under the*  
8           *authority of this paragraph—*

9           *“(i) may obligate the United States, during*  
10           *the effective period of that agreement—*

11           *“(I) to exempt the foreign nation from*  
12           *the provisions of paragraph (1) (C) and (D),*

13           *“(II) to guarantee the foreign nation,*  
14           *for each harvesting season within the effec-*  
15           *tive period of that agreement, a specified per-*  
16           *centage of the total allowable level of foreign*  
17           *fishing in one or more United States fisher-*  
18           *ies,*

19           *“(III) to a reduction or elimination of*  
20           *the fees imposed on the vessel of that nation*  
21           *under section 204(b)(10); and*

22           *“(ii) may obligate the foreign nation—*

23           *“(I) to specify those actions that it will*  
24           *take during the effective period of that agree-*  
25           *ment to benefit the United States in regard*

1 to the issues referred to in paragraph  
2 (1)(E)(i), (ii), (iii), (v), (vii), and (viii), and  
3 “(II) to limit its exports of fish prod-  
4 ucts to the United States during that effec-  
5 tive period.

6 “(C) The Secretary of State may initiate and  
7 conduct negotiations under subparagraph (A) only if  
8 the Secretary of State and the Secretary, after consul-  
9 tation with the appropriate Councils, mutually agree  
10 upon the objectives to be obtained through the negotia-  
11 tions.

12 “(D) A bilateral agreement entered into under  
13 this paragraph may become effective with respect to the  
14 United States only as provided for under section  
15 203.”.

16 **SEC. 4. CONGRESSIONAL OVERSIGHT.**

17 *Section 203 (16 U.S.C. 1823) is amended—*

18 (1) by amending the section heading by inserting  
19 “**AND OTHER BILATERAL AGREEMENTS**” before  
20 the period;

21 (2) by inserting after the first sentence of subsec-  
22 tion (a) the following new sentence: “No bilateral  
23 agreement entered into under section 201(e)(3) shall  
24 become effective with respect to the United States  
25 before the close of the first 30 calendar days of contin-



1        *uous session of Congress after the date on which the*  
2        *President transmits to the House of Representatives*  
3        *and to the Senate a document setting forth the text of*  
4        *that agreement.”; and*

5                (3) *by amending subsection (d)(2)(A) to read as*  
6        *follows:*

7                        *“(A) the effect of which is to prohibit the en-*  
8                        *tering into force and effect of any governing inter-*  
9                        *national fishery agreement, or any bilateral agree-*  
10                        *ment entered into under section 201(e)(3), the text*  
11                        *of which is transmitted to the Congress under*  
12                        *subsection (a) of this section; and”.*

13        **SEC. 5. FOREIGN FISHING PERMITS.**

14                *Section 204(b) (16 U.S.C. 1824(b)) is amended—*

15                        (1) *by adding at the end of paragraph (1) the fol-*  
16                        *lowing new sentence: “No permit issued under this sec-*  
17                        *tion may be valid for longer than a year; and section*  
18                        *558(c) of title 5, United States Code, does not apply to*  
19                        *the renewal of any such permit.”;*

20                        (2) *by striking out “, upon its request” in para-*  
21                        *graph (4)(C);*

22                        (3) *by amending paragraph (6)—*

23                                (A) *by inserting “, or he may disapprove all*  
24                                *or any portion of the application” immediately*

1           *before the period at the end of subparagraph (A),*  
2           *and*

3           *(B) by amending clause (iii) of subpara-*  
4           *graph (B) to read as follows:*

5           *“(iii) In deciding whether to approve any*  
6           *application under this subparagraph, the Secre-*  
7           *tary may take into account, with respect to the*  
8           *foreign nation concerned, such other matters per-*  
9           *taining to the conservation of living marine re-*  
10          *sources as the Secretary considers appropriate.”;*  
11          *and*

12          *(4) by amending paragraph (12) to read as fol-*  
13          *lows:*

14          *“(12) SANCTIONS.—(A) If any foreign fishing*  
15          *vessel has been used in the commission of any act pro-*  
16          *hibited by section 307, or if the owner or operator of*  
17          *the vessel has committed such an act, the Secretary*  
18          *may, or if any civil penalty imposed under section 308*  
19          *or any criminal fine imposed under section 309 has*  
20          *not been paid and is overdue, the Secretary shall—*

21                 *“(i) revoke such permit, if any, issued for*  
22                 *the vessel under this subsection, with or without*  
23                 *prejudice to the right of the foreign nation in-*  
24                 *volved to obtain a permit for such vessel in any*  
25                 *subsequent year;*

1           “(ii) suspend such permit for the period of  
2           time deemed appropriate;

3           “(iii) deny a permit under this subsection to  
4           the vessel; or

5           “(iv) impose additional conditions and re-  
6           strictions on the approved application of the for-  
7           eign nation involved and on any permit issued  
8           under that application.

9           Any permit which is suspended under this subpara-  
10          graph for nonpayment of a civil penalty shall be rein-  
11          stated by the Secretary upon the payment of such civil  
12          penalty together with interest thereon at the prevailing  
13          rate.

14          “(B) The Secretary may temporarily deny or sus-  
15          pend the permit of any foreign fishing vessel pending  
16          the outcome of any administrative proceeding respect-  
17          ing a violation of section 307 of this Act if the Secre-  
18          tary determines that—

19                 “(i) based upon information available to the  
20                 Secretary, there are reasonable grounds to believe  
21                 that the vessel has been used in the commission of  
22                 such violation;

23                 “(ii) immediate suspension of fishing privi-  
24                 leges would serve the purposes of this Act; and

25                 “(iii) either—

1           “(I) the violation presents a serious  
2           threat to the public interest,

3           “(II) the violation presents a serious  
4           threat to the achievement of any purpose or  
5           policy of this Act, or

6           “(III) the owner or operator of the  
7           vessel has been involved in a prior violation  
8           of this Act.

9           In applying this subparagraph—

10           “(I) the Secretary must notify the vessel  
11           owner of the proposed denial or suspension and  
12           give the owner a reasonable opportunity, not  
13           longer than 10 days from service of notice, to re-  
14           spond in writing or otherwise;

15           “(II) if a permit is denied or suspended  
16           under this subparagraph, any administrative pro-  
17           ceeding respecting the violation at issue must be  
18           held as promptly as possible; and

19           “(III) if another permit application is pend-  
20           ing for such vessel on or after the date of the vio-  
21           lation, the Secretary need not act on that applica-  
22           tion before deciding whether or not to deny or sus-  
23           pend temporarily a permit under this subpara-  
24           graph.”.

1 **SEC. 6. REGIONAL FISHERY MANAGMENT COUNCILS.**

2 (a) *VOTING MEMBERS.*—(1) *Subsection (b) of section*  
3 *302 (16 U.S.C. 1852(b)) is amended—*

4 (A) *by amending paragraph (2)(A) to read as fol-*  
5 *lows: "The members of each Council required to be ap-*  
6 *pointed by the Secretary must be individuals who are*  
7 *knowledgeable and experienced with regard to the con-*  
8 *servation and management, or the recreational or com-*  
9 *mercial harvest, of the fishery resources of the geo-*  
10 *graphical area concerned. The Secretary, in making*  
11 *appointments under this section, shall ensure a fair ap-*  
12 *portionment, on a rotating or other basis, of the active*  
13 *participants (or their representatives) involved in the*  
14 *fisheries under Council jurisdiction."*

15 (B) *by adding after the first sentence of para-*  
16 *graph (2)(B) the following new sentence: "A Governor*  
17 *may not submit individuals to the Secretary for ap-*  
18 *pointment unless the Governor has first consulted with*  
19 *representatives of the commercial and recreational fish-*  
20 *ing interests of the state regarding those individuals.";*

21 (C) *by adding at the end of paragraph (2)(B) the*  
22 *following new sentence: "An individual is not eligible*  
23 *for appointment by the Secretary until that individual*  
24 *complies with the applicable financial disclosure re-*  
25 *quirements under subsection (k)."; and*

1           (D) by amending paragraph (3) to read as  
2 follows:

3           “(3) Each voting member appointed to a Council by the  
4 Secretary in accordance with subsection (b)(2) shall serve for  
5 a term of 3 years; except that the Secretary may designate a  
6 shorter term if necessary to provide for balanced expiration to  
7 terms of office.”.

8           (2) The amendments made by paragraph (1) shall apply  
9 with respect to voting members of regional fishery manage-  
10 ment councils who are appointed, and to individuals who are  
11 nominated for appointment as voting members, on or after the  
12 date of the enactment of this Act.

13           (b) COUNCIL COMMENT ON FEDERAL AND STATE  
14 ACTION AFFECTING HABITAT.—Section 302 is further  
15 amended—

16           (1) by redesignating subsection (i) as subsection  
17 (j); and

18           (2) by adding after subsection (h) the following  
19 new subsection:

20           “(i) FISHERY HABITAT CONCERNS.—Each Council  
21 may comment on, or make recommendations concerning, any  
22 activity undertaken, or proposed to be undertaken, by any  
23 State or Federal agency that, in the view of the Council, may  
24 affect the habitat of a fishery resource under its jurisdiction.  
25 Within 45 days after receiving such a comment or recom-

1 *mendation from a Council, a Federal agency must provide a*  
2 *detailed response, in writing, to the Council regarding the*  
3 *matter.”.*

4       (c) *CLOSURE OF MEETINGS.*—Paragraph (4) of sec-  
5 *tion 302(j) (as redesignated by subsection (b)) is amended by*  
6 *striking out “; except that” and all that follows thereafter and*  
7 *inserting in lieu thereof “; except that such procedures, in the*  
8 *case of statistics submitted to the Council by a State or by*  
9 *the Secretary under section 303(d), must be consistent with*  
10 *the laws and regulations of that State, or with the procedures*  
11 *of the Secretary, as the case may be, concerning the confiden-*  
12 *tiality of the statistics.”.*

13       (d) *COMMITTEES AND PANELS.*—Subsection (j) (as re-  
14 *designated by subsection (b)) of section 302 is further amend-*  
15 *ed by adding at the end thereof the following new paragraph:*

16       “(5) *Each Council shall specify those procedures that*  
17 *are necessary or appropriate to ensure that the committees*  
18 *and advisory panels established under subsection (g) are in-*  
19 *volved, on a continuing basis, in the development and amend-*  
20 *ment of fishery management plans.”.*

21       (e) *DISCLOSURE OF FINANCIAL INTEREST.*—(1) *Sec-*  
22 *tion 302 is further amended by adding at the end thereof the*  
23 *following new subsection:*

1       “(k) *DISCLOSURE OF FINANCIAL INTEREST.—(1)*

2 *For purposes of this subsection, the term “affected individ-*  
3 *ual” means an individual who—*

4               “(A) *is nominated by the Governor of a State for*  
5 *appointment as a voting member of a Council in ac-*  
6 *cordance with subsection (b)(2);*

7               “(B) *is a voting member of a Council appointed*  
8 *under subsection (b)(2); or*

9               “(C) *is the executive director of a Council.*

10       “(2) *Each affected individual must disclose any finan-*  
11 *cial interest held by—*

12               “(A) *that individual;*

13               “(B) *the spouse, minor child, or partner of that*  
14 *individual; and*

15               “(C) *any organization (other than the Council) in*  
16 *which that individual is serving as an officer, director,*  
17 *trustee, partner, or employee;*

18 *in any harvesting, processing, or marketing activity that is*  
19 *being, or will be, undertaken within any fishery over which*  
20 *the Council concerned has jurisdiction.*

21       “(3) *The disclosure required under paragraph (2) shall*  
22 *be made—*

23               “(A) *in the case of an affected individual referred*  
24 *to in paragraph (1)(A), before appointment by the Sec-*  
25 *retary; and*



1           “(B) in the case of an affected individual referred  
2           to in paragraph (1)(B) or (C), within 45 days of  
3           taking office.

4           “(4) An affected individual referred to in paragraph  
5           (1)(B) or (C) must update his or her disclosure form at any  
6           time any such financial interest is acquired, or substantially  
7           changed, by any person referred to in paragraph (2)(A), (B),  
8           or (C).

9           “(5) The financial interest disclosures required by this  
10          subsection shall—

11           “(A) be made on such forms, in accordance with  
12           such procedures, and at such times, as the Secretary  
13           shall by regulation prescribe; and

14           “(B) be kept on file, and made available for  
15           public inspection at reasonable hours, at the Council  
16           offices.

17           “(6) The participation by an affected individual re-  
18           ferred to in paragraph (1)(B) or (C) in an action by a Coun-  
19           cil during any time in which that individual is not in compli-  
20           ance with the regulations prescribed under paragraph (5)  
21           may not be treated as cause for the invalidation of that  
22           action.

23           “(7) Section 208 of title 18, United States Code, does  
24           not apply to an affected individual referred to in paragraph  
25           (1)(B) or (C) during any time in which that individual is in

1 compliance with the regulations prescribed under paragraph  
2 (5).”.

3 (2) For purposes of applying subsection (k) of section  
4 302 (as added by paragraph (1)) to voting members and exec-  
5 utive directors of regional fishery management councils who  
6 are serving in those capacities on the date on which the regu-  
7 lations prescribed to carry out that subsection first take effect,  
8 each such member or director must file a disclosure form  
9 under that subsection within 45 days after that date.

10 **SEC. 7. FISHERY MANAGEMENT PLANS; DISCLOSURE OF CONFI-**  
11 **DENTIAL STATISTICS.**

12 (a) **REQUIRED PROVISIONS.**—(1) Section 303(a) (16  
13 U.S.C. 1853(a)) is amended—

14 (A) by striking out “and” at the end of paragraph  
15 (4);

16 (B) by striking out the period at the end of para-  
17 graph (5) and inserting in lieu thereof a comma; and

18 (C) by adding after paragraph (5) the following  
19 new paragraphs:

20 “(6) consider, and may provide for, temporary ad-  
21 justments, after consultation with the Coast Guard and  
22 persons utilizing the fishery, regarding access to the  
23 fishery for vessels otherwise prevented from harvesting  
24 because of weather or other ocean conditions affecting  
25 the safety of the vessels; and

1           “(7) include readily available information regard-  
2           ing the significance of habitat to the fishery and as-  
3           sessment as to the effects which changes to that habitat  
4           may have upon the fishery.”

5           (2) The amendments made by paragraph (1) apply to  
6 each fishery management plan that—

7           (A) is submitted to the Secretary of Commerce for  
8           review under section 304(a), or that is prepared by the  
9           Secretary, after January 1, 1986; or

10          (B) is in effect on that date, but compliance with  
11          those amendments is not required except in conjunction  
12          with the amendment to the plan next occurring after  
13          that date.

14          (b) *DISCRETIONARY PROVISIONS.*—Section 303(b)  
15 (16 U.S.C. 1853(b)) is amended—

16          (1) by redesignating subparagraphs (A) through  
17          (F) of paragraph (6) as clauses (i) through (vi), respec-  
18          tively;

19          (2) by inserting “(1)” following the subheading  
20          and by redesignating paragraphs (1) through (8) as  
21          subparagraphs (A) and (H), respectively;

22          (3) by amending paragraph (F) (as redesignated  
23          by paragraph (2) of this subsection) by inserting “sub-  
24          ject to paragraph (2),” immediately after “(F)”;

1           (4) by redesignating subparagraphs (G) and (H)  
2           (as redesignating by paragraph (2) of this subsection)  
3           as subparagraphs (H) and (I), respectively;

4           (5) by inserting after subparagraph (F) the fol-  
5           lowing new subparagraph:

6           “(G) if a limited access system is established  
7           under subparagraph (F), and subject to paragraph (2),  
8           establish a fishery compensation plan subject to subsec-  
9           tion (f);” and

10          (6) by adding at the end thereof the following new  
11          paragraph:

12          “(2)(A) No limited access system or fishery compensa-  
13          tion plan referred to in paragraph (1)(F) and (G) may be  
14          approved or implemented by the Secretary under section 304  
15          unless—

16                 “(i) the system or plan, or both, are approved by  
17                 not less than three-fourths of the voting members of the  
18                 Council having jurisdiction over the fishery for which  
19                 the system will be implemented; and

20                 “(ii) the establishment of the system or plan, or  
21                 both, is approved by at least two-thirds of the fishermen  
22                 presently participating in that fishery.

23          “(B) No limited access system referred to in paragraph  
24          (I)(F) may be approved or implemented by the Secretary  
25          under section 304 unless the system prohibits the sale of all

1 *permits, shares, or right that may be granted to fishermen*  
2 *who participate in the system.”.*

3 (c) *DISCLOSURE OF CONFIDENTIAL STATISTICS.—*

4 *The first sentence of section 303(d) (16 U.S.C. 1853(d)) is*  
5 *amended to read as follows: “Any statistic submitted to the*  
6 *Secretary by any person in compliance with any requirement*  
7 *under subsection (a)(5) shall be confidential and shall not be*  
8 *disclosed; except—*

9 “(1) *to National Marine Fisheries Service per-*  
10 *sonnel and Council employees who are responsible for*  
11 *management plan development and monitoring; or*

12 “(2) *when required by court order.”.*

13 (d) *FISHERY COMPENSATION PLANS.—Section 303 is*  
14 *further amended by adding at the end thereof the following*  
15 *new subsection:*

16 “(E) *FISHERY COMPENSATION PLANS.—(1) For pur-*  
17 *poses of this subsection, the term ‘fishery compensation plan’*  
18 *means a plan, whether administered by the Secretary or by*  
19 *the States represented on the Council that established the*  
20 *plan, for compensating, in whole or in part, fishing vessel*  
21 *owners for the loss or reduction of livelihood that results from*  
22 *the implementation of a limited access system (intended to*  
23 *reduce overcapitalization in a particular fishery) under sub-*  
24 *section (b)(1)(F), including, but not limited to, compensation*  
25 *through purchase of their vessels, financial assistance to*

1 *modify vessels for use in other fisheries, or other financial*  
2 *remunerations as established by the Council. A fishery com-*  
3 *ensation plan shall be funded through fees levied under sub-*  
4 *section (b)(1)(A).*

5       “(2) *In developing a fishery compensation plan, the*  
6 *Council and the Secretary shall take into account the factors*  
7 *listed in subsection (b)(1)(F)(i) through (vi) and the effect of*  
8 *the plan on the fishermen who will be displaced by the*  
9 *system.*

10       “(3) *All fees collected under a fishery compensation*  
11 *plan shall be deposited into the Fishery Compensation Fund*  
12 *established under paragraph (4).*

13       “(4)(A) *There is established in the Treasury of the*  
14 *United States a revolving fund known as the Fishery Com-*  
15 *ensation Fund (hereinafter in this paragraph referred to as*  
16 *the ‘Fund’). Each fishery compensation plan established*  
17 *under subsection (b)(1)(G) shall have a separate account in*  
18 *the Fund and the fees collected under the program that are*  
19 *deposited into the Fund shall be credited to that account.*

20       “(B) *The Secretary shall withdraw funds credited to*  
21 *any account at such times and in such amounts as may be*  
22 *necessary for the administration of the fishery compensation*  
23 *plan concerned.”.*

1       (e) *NORTHERN PACIFIC HALIBUT CONVENTION.*—  
2       Section 6(c) of the Northern Pacific Halibut Act of 1982 (16  
3       U.S.C. 773c(c)) is amended—

4               (1) by striking out “, including limited access  
5       regulations,” and inserting in lieu thereof “, including  
6       limited access and fishery compensation plan regula-  
7       tions,”; and

8               (2) by amending the second sentence thereof to  
9       read as follows: “Such regulations shall only be imple-  
10      mented with the approval of the Secretary; shall not  
11      discriminate between residents of different States; and  
12      shall be consistent with the limited entry system and  
13      fishery compensation plan criteria, and the conditions  
14      on the approval thereof, set forth in subsections (b) and  
15      (f) of the Magnuson Fishery Conservation and Man-  
16      agement Act.”.

17   **SEC. 8. ACTION BY SECRETARY REGARDING FISHERY MANAGE-**  
18                                    **MENT PLANS.**

19       Section 304 (19 U.S.C. 1854) is amended as follows:

20               (1) Subsection (a) is amended—

21                       (A) by striking out “(the date of receipt of  
22       which is hereafter in this section referred to as the  
23       ‘receipt date’)” in paragraph (1);

1           (B) by redesignating subparagraphs (A),  
2           (B), and (C) of paragraph (1) as subparagraphs  
3           (B), (C), and (D), respectively;

4           (C) by inserting immediately before subpara-  
5           graph (B) of paragraph (1), as so redesignated,  
6           the following new subparagraph:

7           “(A) immediately make a preliminary evaluation  
8           of the management plan or amendment for purposes of  
9           deciding if it is consistent with the national standards  
10          and sufficient in scope and substance to warrant  
11          review under this subsection and—

12           “(i) if that decision is affirmative, implement  
13          subparagraphs (B), (C), and (D) with respect to  
14          the plan or amendment, or

15           “(ii) if that decision is negative—

16           “(I) disapprove the plan or amendment,  
17          and

18           “(II) notify the Council, in writing, of  
19          the disapproval and of those matters specified  
20          in subsection (b)(2)(A), (B) and (C) as they  
21          relate to the plan or amendment;”;

22          (D) by amending paragraph (2)—

23           (i) by striking out “(1)(A)” and insert-  
24          ing in lieu thereof “(1)(B)”; and



1                   (ii) by striking out the period at the end  
2                   of subparagraph (C) and inserting in lieu  
3                   thereof "and to fishery access adjustments re-  
4                   ferred to in section 303(a)(6)."

5                   (E) by adding at the end thereof the follow-  
6                   ing new paragraph:

7                   “(3)(A) The Secretary shall take action under this sec-  
8                   tion on any fishery management plan or amendment to a  
9                   plan which the Council characterizes as being a final plan or  
10                  amendment.

11                  “(B) For purposes of this section, the term ‘receipt date’  
12                  means the 5th day after the day on which a Council trans-  
13                  mits to the Secretary a fishery management plan, or an  
14                  amendment to a plan, that it characterizes as a final plan or  
15                  amendment.”

16                  (2) Subsection (b) is amended—

17                         (A) by amending paragraph (1)(A) to read  
18                         as follows:

19                         “(A) the Secretary does not notify the Council in  
20                         writing of—

21                                 “(i) his disapproval under subsection  
22                                 (a)(1)(A)(ii), or

23                                 “(ii) his disapproval, or partial disapproval,  
24                                 under paragraph (2), of the plan or amendment

1           *before the close of the 95th day after the receipt*  
2           *date; or”;*

3           *(B) by amending paragraph (2) by striking*  
4           *out “paragraph (1)(A)” and inserting in lieu*  
5           *thereof “paragraph (1)(B)”;* and

6           *(C) by amending paragraph (3)—*

7           *(i) by striking out “If the Secretary” in*  
8           *subparagraph (A) and inserting in lieu*  
9           *thereof “If the Secretary disapproves a pro-*  
10          *posed plan or amendment under subsection*  
11          *(a)(1)(A)(ii), or”, and*

12          *(ii) by striking out “(a)(1)(A)” in each*  
13          *of subparagraphs (B)(i) and (C)(i) and in-*  
14          *serting in lieu thereof “(a)(1)(B)”.*

15          *(3) Subsection (d) is amended by striking out the*  
16          *period at the end thereof and inserting in lieu thereof*  
17          *the following: “; except that if fees are also used to*  
18          *fund a fishery compensation plan under section*  
19          *303(b)(1)(G), the level of fees shall not exceed the ad-*  
20          *ministrative costs incurred in issuing the permits and*  
21          *the costs of funding that plan.”.*

22          *(3) Subsection (e) is amended—*

23          *(A) by inserting “, in cooperation with the*  
24          *Councils,” immediately after “maintain”;*

1           (B) by striking out "management," and in-  
2           serting "management and on the economics of the  
3           fisheries,"; and

4           (C) by adding at the end thereof the follow-  
5           ing: "The Secretary shall annually review and  
6           update the comprehensive program and make the  
7           results of the review and update available to the  
8           Councils."

9   **SEC. 9. STATE JURISDICTION.**

10          Section 306 (16 U.S.C. 1856) is amended as follows:

11           (1) Subparagraph (C) of subsection (a)(2) is  
12           amended by striking out "(for the purpose of regulating  
13           fishing for other than any species of crab)".

14           (2) Subsection (b) is amended to read as follows:

15           "(b)(1) If the Secretary, after consultation with a State,  
16           finds that—

17           "(A) the fishing in a fishery, which is covered by  
18           a fishery management plan implemented under this  
19           title, is engaged in predominately within the exclusive  
20           economic zone and beyond such zone; and

21           "(B) the State has taken any action, or omitted to  
22           take any action, the results of which will substantially  
23           and adversely affect the carrying out of such fishery  
24           management plan;

1 *the Secretary shall promptly notify the State and the appro-*  
2 *priate Council of such finding and of his intention to regu-*  
3 *late the applicable fishery within the boundaries of the State,*  
4 *pursuant to that fishery management plan and the regula-*  
5 *tions promulgated to implement that plan. The notification*  
6 *shall also inform the State that, at its request if promptly*  
7 *made, the Secretary will submit the matters involved in the*  
8 *finding to arbitration under such procedures as may be mu-*  
9 *tually agreeable to the Secretary and the State. The entering*  
10 *into arbitration between the Secretary and the State does not*  
11 *affect the authority of the Secretary to commence or continue*  
12 *regulation of the fishery under the authority of this para-*  
13 *graph.*

14       “(2) *If the Secretary assumes responsibility under*  
15 *paragraph (1) for the regulation of a fishery within the*  
16 *boundaries of a State, the State may—*

17               “(A) *request a hearing in accordance with section*  
18       *554 of title 5, United States Code, regarding the find-*  
19       *ing of the Secretary under paragraph (1), but the au-*  
20       *thority of the Secretary to regulate the fishery under*  
21       *paragraph (1) shall terminate on the 60th day after the*  
22       *date on which the hearing is requested unless the hear-*  
23       *ing is commenced before that day; or*

24               “(B) *apply to the Secretary for reinstatement of*  
25       *its authority over the fishery.*

1 *If after application under subparagraph (B) the Secretary*  
2 *finds that the reasons for which he assumed regulation of the*  
3 *fishery in the State waters no longer prevail, the Secretary*  
4 *shall promptly terminate that regulation.”.*

5 **SEC. 10. SUBMISSION OF CERTAIN FALSE STATEMENTS A PRO-**  
6 **HIBITED ACT.**

7 (a) Section 307(1) (16 U.S.C. 1857(1)) is amended—

8 (1) by striking out “or” at the end of subpara-  
9 graph (G);

10 (2) by inserting “or” after the semicolon at the  
11 end of subparagraph (H); and

12 (3) by adding at the end thereof the following new  
13 subparagraph:

14 “(I) to knowingly and willfully submit to a  
15 Council, the Secretary, or the Governor of a State  
16 false information (including, but not limited to, false  
17 information regarding the capacity and extent to which  
18 a United States fish processor, on an annual basis,  
19 will process a portion of the optimum yield of a fishery  
20 that will be harvested by fishing vessels of the United  
21 States) regarding any matter that the Council, Secre-  
22 tary, or Governor is considering in the course of carry-  
23 ing out this Act.”.

1       (b) Section 309(a)(1) (16 U.S.C. 1859(a)(1)) is  
2 amended by striking out "or (H)" and inserting in lieu there-  
3 of "(H), or (J)".

4 **SEC. 11. CIVIL PENALTIES.**

5       Section 308 (16 U.S.C. 1858) is amended—

6           (1) by amending the first sentence of subsection  
7 (b) to read as follows: "Any person against whom a  
8 civil penalty is assessed under subsection (a) may  
9 obtain review thereof in the United States district  
10 court for the appropriate district by filing a complaint  
11 in such court within 30 days from the date of such  
12 order and by simultaneously serving a copy of such  
13 complaint by certified mail on the Secretary, the Attor-  
14 ney General and the appropriate United States Attor-  
15 ney.";

16           (2) by redesignating subsections (d) and (e) as  
17 subsections (e) and (f), respectively; and

18           (3) by inserting immediately after subsection (c) a  
19 new subsection (d) to read as follows:

20           "(d) *IN REM JURISDICTION.*—A fishing vessel  
21 (including its fishing gear, furniture, appurtenances,  
22 stores, and cargo) used in the commission of an act  
23 prohibited by section 307 shall be liable in rem for any  
24 civil penalty assessed for such violation under section  
25 308 and may be proceeded against in any district

1 *court of the United States having jurisdiction thereof.*  
2 *Such penalty shall constitute a maritime lien on such*  
3 *vessel which may be recovered in an action in rem in*  
4 *the district court of the United States having jurisdic-*  
5 *tion over the vessel.”.*

6 **SEC. 12. REPEAL.**

7 *Section 401 (16 U.S.C. 1881; relating to the Law of*  
8 *Sea Treaty), and the entry referring to that section in the*  
9 *table of contents of the Act, are repealed.*

10 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

11 *(a) AUTHORIZATION.—Section 406 (16 U.S.C. 1882)*  
12 *is amended by adding at the end thereof the following new*  
13 *paragraph:*

14 *“(12) \$69,000,000 for each of the fiscal years*  
15 *1986 and 1987.”.*

16 *(b) LIMITATIONS REGARDING CERTAIN NOAA FISH-*  
17 *ERY RESEARCH VESSELS.—None of the funds authorized*  
18 *for appropriation under this Act or any other law may be*  
19 *used by the Secretary of Commerce during fiscal year 1986*  
20 *to replace with chartered fishery survey vessels the fishery*  
21 *research vessels of the National Oceanic and Atmospheric*  
22 *Administration operated by the Atlantic Marine Center.*  
23 *During fiscal year 1987, the Secretary of Commerce may*  
24 *not contract out the services of the fishery research vessels*  
25 *referred to in the preceding sentence except in accordance*

1 *with the provisions of the Office of Management and Budget*  
2 *Circular A-76.*

3 **SEC. 14. CLERICAL AMENDMENTS.**

4 *Section 3(4) (16 U.S.C. 1802(4)) is amended—*

5 *(1) by striking out "Artica islandica" in the list-*  
6 *ing of mollusks and inserting in lieu thereof "Arctica*  
7 *islandica"; and*

8 *(2) by striking out "Hippiospongia canaliculata"*  
9 *in the listing of sponges and inserting in lieu thereof*  
10 *"Spongia cheiris".*

11 **SEC. 15. FINDINGS AND DIRECTIONS REGARDING THE PACIFIC**  
12 **FISHERY MANAGEMENT COUNCIL.**

13 *Notwithstanding section 302 of the Magnuson Fishery*  
14 *Conservation and Management Act (16 U.S.C. 1852) and*  
15 *effective with the date of the enactment of this section, the*  
16 *Secretary shall take immediate action to ensure that those*  
17 *persons dependent upon the fisheries within the jurisdiction*  
18 *of the Pacific Fishery Management Council for their liveli-*  
19 *hood are fairly represented as voting members of the Council.*